IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION

ZapMedia SERVICES, INC., a foreign corporation,	)	
Plaintiff,	)	
v.	)	CIVIL ACTION FILE NO. 2:08-cv-00104-DF-CE
APPLE, INC., a foreign corporation.	)	JURY TRIAL DEMANDED
Defendant.	)	

PLAINTIFF'S REPLY TO DEFENDANT'S COUNTERCLAIMS

COMES NOW, Plaintiff ZapMedia Services, Inc. ("ZapMedia"), by and through its undersigned counsel, and pursuant to Rule 12(a)(1)(B) of the Federal Rules of Civil Procedure hereby replies to the Counterclaims of Defendant Apple, Inc. ("Apple"), which counterclaims were asserted in Defendant's "Answer, Affirmative Defenses, and Counterclaims" (Doc. No. 14), and answers as follows:

AFFIRMATIVE DEFENSES

First Affirmative Defense

Apple's Counterclaims in whole or in part fail to state a claim upon which relief can be granted.

Second Affirmative Defense

Apple's Counterclaims, insofar as they allege invalidity of the claims of U.S. Patent Nos. 7,020,704 ("the '704 patent") and/or 7,343,414 ("the '404 patent"), are barred by the `704 and the '414 patents, respectively, the issuance of which are presumed valid pursuant to 35 U.S.C. §

282, which presumption of patent validity and enforceability can only be overcome by clear and convincing evidence.

Third Affirmative Defense

ZapMedia reserves all affirmative defenses under Rule 8(c) of the Federal Rules of Civil Procedure and any other defenses, at law or in equity, which may be available now or may become available in the future based on further investigation, discovery, or contentions or claims of Apple.

REPLY TO APPLE'S COUNTERCLAIMS

ZapMedia answers the respective, specifically numbered paragraphs of Apple's Counterclaims, as follows:

1. The specific allegations contained in Paragraph 28 of Apple's Counterclaims are not allegations of fact and therefore need not be admitted or denied. However, to the extent the allegations contained in Paragraph 28 of Apple's Counterclaims attempt to "incorporate by reference" the averments in its Answer and Affirmative Defenses or otherwise require a response, they are denied except as specifically admitted herein below.

2. ZapMedia admits that this Court has subject matter jurisdiction over Apple's Counterclaims as against ZapMedia. ZapMedia denies the validity or merit of the counterclaims and the remaining allegations contained in Paragraph 29 of Apple's Counterclaims.

3. ZapMedia admits the allegations contained in Paragraph 30 of Apple's Counterclaims.

4. ZapMedia admits the allegations contained in Paragraph 31 of Apple's Counterclaims.

5. ZapMedia admits the allegations contained in Paragraph 32 of Apple's Counterclaims.

First Counterclaim – Declaration of Invalidity of the '704 Patent

6. ZapMedia reasserts and incorporates by reference Paragraphs 1-5 of its Reply hereinabove. Any allegations of Paragraphs 28-33 of the Counterclaims not expressly admitted herein are denied. To the extent the allegations contained in Paragraph 33 of Apple's Counterclaims attempt to "incorporate by reference" the averments in its Answer and Affirmative Defenses or otherwise require a response, they are denied except as specifically admitted herein below.

7. ZapMedia admits that it has accused Apple of infringing the '704 patent. ZapMedia denies that there is any controversy regarding the *bona fide* validity of the '704 patent as a result of said accusation, as alleged in Paragraph 34 of Apple's Counterclaims, or otherwise.

8. ZapMedia denies the allegations contained in Paragraph 35 of Apple's Counterclaims.

9. ZapMedia denies the allegations contained in Paragraph 36 of Apple's Counterclaims.

10. ZapMedia denies the allegations contained in Paragraph 37 of Apple's Counterclaims.

11. ZapMedia denies the allegations contained in Paragraph 38 of Apple's Counterclaims.

Second Counterclaim – Declaration of Non-Infringement of the '704 Patent

12. ZapMedia reasserts and incorporates by reference Paragraphs 1-11 of its Reply hereinabove. Any allegations of Paragraphs 28-38 of the Counterclaims not expressly admitted

herein are denied. To the extent the allegations contained in Paragraph 39 of Apple's Counterclaims attempt to "incorporate by reference" the averments in its Answer and Affirmative Defenses or otherwise require a response, they are denied except as specifically admitted herein below.

13. ZapMedia admits the allegations contained in Paragraph 40 of Apple's Counterclaims.

14. ZapMedia denies the allegations contained in Paragraph 41 of Apple's Counterclaims.

15. ZapMedia denies the allegations contained in Paragraph 42 of Apple's Counterclaims.

16. ZapMedia denies the allegations contained in Paragraph 43 of Apple's Counterclaims.

17. ZapMedia denies the allegations contained in Paragraph 44 of Apple's Counterclaims.

Third Counterclaim – Declaration of Invalidity of the '414 Patent

18. ZapMedia reasserts and incorporates by reference Paragraphs 1-17 of its Reply hereinabove. Any allegations of Paragraphs 28-45 of the Counterclaims not expressly admitted herein are denied. To the extent the allegations contained in Paragraph 45 of Apple's Counterclaims attempt to "incorporate by reference" the averments in its Answer and Affirmative Defenses or otherwise require a response, they are denied except as specifically admitted herein below.

19. ZapMedia admits that it has accused Apple of infringing the ‘414 patent. ZapMedia denies that there is any *bona fide* controversy regarding the validity of the ‘414 patent as a result of said accusation, as alleged in Paragraph 46 of Apple’s Counterclaims, or otherwise.

20. ZapMedia denies the allegations contained in Paragraph 47 of Apple’s Counterclaims.

21. ZapMedia denies the allegations contained in Paragraph 48 of Apple’s Counterclaims.

22. ZapMedia denies the allegations contained in Paragraph 49 of Apple’s Counterclaims.

23. ZapMedia denies the allegations contained in Paragraph 50 of Apple’s Counterclaims.

Fourth Counterclaim – Declaration of Non-Infringement of the ‘414 Patent

24. ZapMedia reasserts and incorporates by reference Paragraphs 1-23 of its Reply hereinabove. Any allegations of Paragraphs 28-50 of the Counterclaims not expressly admitted herein are denied. To the extent the allegations contained in Paragraph 51 of Apple’s Counterclaims attempt to “incorporate by reference” the averments in its Answer and Affirmative Defenses or otherwise require a response, they are denied except as specifically admitted herein below.

25. ZapMedia admits the allegations contained in Paragraph 52 of Apple’s Counterclaims.

26. ZapMedia denies the allegations contained in Paragraph 53 of Apple’s Counterclaims.

27. ZapMedia denies the allegations contained in Paragraph 54 of Apple's Counterclaims.

28. ZapMedia denies the allegations contained in Paragraph 55 of Apple's Counterclaims.

29. ZapMedia denies the allegations contained in Paragraph 56 of Apple's Counterclaims.

Apple's Prayer for Relief

30. ZapMedia denies that Apple is entitled to the relief requested in Paragraph (a) of Apple's prayer for relief.

31. ZapMedia denies that Apple is entitled to the relief requested in Paragraph (b) of Apple's prayer for relief.

32. ZapMedia denies that Apple is entitled to the relief requested in Paragraph (c) of Apple's prayer for relief.

33. ZapMedia denies that Apple is entitled to the relief requested in Paragraph (d) of Apple's prayer for relief.

34. ZapMedia denies that Apple is entitled to the relief requested in Paragraph (e) of Apple's prayer for relief.

35. ZapMedia denies that Apple is entitled to the relief requested in Paragraph (f) of Apple's prayer for relief.

36. ZapMedia denies that Apple is entitled to the relief requested in Paragraph (g) of Apple's prayer for relief.

37. ZapMedia denies that Apple is entitled to the relief requested in Paragraph (h) of

Apple's prayer for relief.

38. ZapMedia denies that Apple is entitled to any further relief as requested in Paragraph (i) of Apple's prayer for relief, insofar as such relief is requested as to Apple's Counterclaims.

39. Any allegation contained in Apple's Counterclaims not specifically admitted herein is denied.

WHEREFORE, Plaintiff and Defendant-in-Counterclaim ZapMedia prays for the dismissal of these Counterclaims with prejudice, an award of costs and attorney's fees pursuant to 35 U.S.C. Sect. 285 and other supporting authority, and an award of damages and injunctive relief for the ongoing acts of patent infringement complained of by Plaintiff, along with the trebling of such damages as willful, and the imposition of such other and further relief as the Court deems just and proper under the circumstances.

JURY DEMAND

Plaintiff ZapMedia demands a trial by jury on all mattes raised by Defendant's Answer, Affirmative Defenses and Counterclaims, and by ZapMedia in its Complaint, and all issues so triable.

This 20th day of May, 2008.

Respectfully submitted,

*/s/ Eric G. Maurer*______________________

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CERTIFICATE OF SERVICE

I hereby certify that on this date a true and correct copy of the foregoing PLAINTIFF'S REPLY TO DEFENDANT'S COUNTERCLAIMS, filed electronically in compliance with Local Rule CV-5(a), was served via CM/ECF in accordance with Local Rule CV-5(d) upon the following:

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This 20th day of May, 2008.

Respectfully submitted,

*/s/ Eric G. Maurer*______________________

Attorney for Plaintiff